85-61

Office-Supreme Court, U.S.
FILED
JUN 19 1985
ALEXANDER L. STEVAS
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

WALLACE MC FARLAND, Petitioner,

v.

MC GUINN, HILLSMAN & PALEFSKY and
JOHN HILLSMAN, etc., et al.,
Defendants.

AMENDED

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Wallace McFarland
1322 McAllister Street
San Francisco, California 94115
(415) 567-1446

July 4 1985

In Propria Persona

QUESTIONS PRESENTED

1. Whether the district court actually dismissed petitioner's complaint with prejudice as to all defendants, including nonmoving parties, when it incorrectly stated that "(D)efendant has failed to state a claim for which relief can be granted against the moving defendants or any of the named defendants."

2. Whether the district court revived petitioner's action and clarified its dismissal of his complaint with prejudice as to nonmoving parties and as to defendant Shipyard & Marine Shop Labor's Local 886 when it filed its order dated May 22, 1984 (24 days prior to the hearing of defendant Shipyard & Marine Shop Labor's Local 886's motion to dismiss)

prohibiting petitioner from filing any further complaints prepared by him.

3. Whether the district court abused its discretion by dismissing petitioner's complaint with prejudice before the dates set for hearing of the motions to dismiss had occurred on May 25, 1984.

4. Whether the district court's record reflected the entry of a separate judgment in compliance with Federal Rule of Civil Procedure 58 in dismissing petitioner's complaint with prejudice.

5. Whether the district court's record reflected the proper entry of a separate judgment in compliance with Federal Rule of Civil Procedure 58 as to its order prohibiting petitioner from filing any further complaints prepared

6. Petitioner discovered for the first time on May 1, 1985, that the court entered in the docket two months before the trial judge entered his "Order" on May 23, 1984. See Appendix A, Page D-8 and Appendix A -E-1. This alone is grounds for further hearing.

7. Whether the district court violated Petitioner's rights under newly discovered evidence. See Kash N' Karry Wholesale Supermarkets, Inc. v. Garcia, Fla. App., 221 So.2d 786, 788.

8. Whether the district court abused its discretion by taking judicial notice of compensation cases pending in another tribunal. Case number 82 LHC 101, OWCP No. 13-14151; See Appendix A Pages -E-1 and -T-, -T1- and -T2-.

9. Whether the Ninth Circuit Court of Appeals dismissed petitioner's motion for reconsideration in error, as

mentioned by the Court. See Appendix A, pages A and B on January 18, 1985. Further, there are still several procedural matters pending which require resolution. On or about 5-13-84, the defendant had moved to dismiss petitioner's complaint; the trial judge on 5-24-84 scheduled June 21, 1984 for defendant to be heard one day after his Order was entered in the Civil Docket. At the bottom of said "Order" were some handwritten notations setting forth dates presumably for future events regarding this case. Particularly the scheduled and upcoming hearing of another motion on or about May 13, 1984, which had been filed by another defendant in the litigation. A copy of the "Order" and copy of "Granting Motion" are attached. See Appendix A and V. The trial judge did not end his order on 5-24-84.

10. Whether the Ninth Circuit Court of Appeals sanctioned the district court in a departure from the accepted and usual course of judicial proceedings in violation of Federal Rules of Civil Procedure 15(a), 58 and 61, and in violation of 28 U.S.C. 2111 when it denied petitioner's motion for reconsideration of the dismissal of his complaint.

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OPINIONS BELOW

The initial opinion of the United States Court of Appeals for the Ninth Circuit is unreported and is printed in Appendix A hereto, infra, at page A.

After accepting petitioner's motion for reconsideration of the Ninth Circuit's initial opinion, the Ninth Circuit Court of Appeals issued a second opinion and order, again unreported, which is printed in Appendix A hereto, infra, at page B.

The final order of the United States Court of Appeals for the Ninth Circuit is

printed in Appendix A hereto, infra, at page C. The Journal Entry of Judgment of the United States District Court for the Northern District of California is printed in Appendix A hereto, infra, at page D1-D6. and the orders of the district court appealed from to the Ninth Circuit Court of Appeals are printed in Appendix A hereto, infra, in pages E1, E2 and F.

JURISDICTION

The final order of the United States Court of Appeals for the Ninth Circuit was entered on March 19, 1985. Petitioner did not file a petition for rehearing. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Federal Rule of Civil Procedure 15(a):

> Amended and Supplemental Pleadings... Amendments.
>
> A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. ...

Federal Rule of Civil Procedure 58:

> Entry of Judgment:
>
> Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon

a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). .....

Federal Rule of Civil Procedure 61:

Harmless Error:

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

28 U.S.C. § 2111. Harmless Error

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

28 U.S.C. § 1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

Defendant argued that the District Court had no jurisdiction over petitioner's claim.

STATEMENT OF CASE

A dispute arose between petitioner and his former employer, Bethlehem Steel Corporation, about personal injuries he sustained on the job in 1970. He initiated a claim for compensation benefits under the Longshoremen's and Harbor Worker's Compensation Act, as amended, 33 U.S.C. § 901 et seq., for these injuries and was denied relief by the U.S. Department of Labor Benefits Review Board and by the United States Court of Appeals for the Ninth Circuit. Petitioner thereafter brought an action in federal court against respondents and other defendants alleging federal claims for violation of 33 U.S.C. §901 et seq., 42 U.S.C. §§ 1981 and 1983, and 42 U.S.C. §2000e et seq., and alleging pendent state causes of action for breach of contract, fraud

and misrepresentation, and attempt to defraud.

Petitioner filed his action in propria persona without the assistance of counsel in the federal district court for the Northern District of California, Civil Action No. C 84 0499 WHO. Petitioner alleged that the district court had jurisdiction of his action under 28 U.S.C. §§ 1331, 1343 and 2201. Shortly after filing his complaint, petitioner filed a document resembling his complaint with the sub-caption "Supplementary & Corrections to the 1st Cause of Action."

Respondents filed a motion to dismiss petitioner's complaint or in the alternative to require a more definite statement in March, 1984. Two other defendents filed similar motions in April, 1984, and a third defendant filed a motion to dismiss or require a more definite statement in May, 1984.

The motions filed in March, 1984 and in April, 1984 were set to be heard and argued on May 25, 1984. The motion filed in May, 1984, was initially set for oral argument on June 15, 1984, and was arguably continued and recalendared for argument on June 21, 1984. None of the defendants answered petitioner's complaint.

Petitioner timely filed an objection to respondents' motions on April 30, 1984, as noted in the district court's docket sheet, a copy of which is printed herein in Appendix A, infra, page D4. Petitioner's objection also requested that in the event respondents' and other moving parties' motions to dismiss are granted, he be allowed to file a complaint in another court (See Appendix A, infra, page G).

The district court granted the moving parties' motions to dismiss petitioner's

action with prejudice by its order dated May 22, 1984, which was entered in the court's docket sheet on May 23, 1984. However, at or about this same time it appears that the court recalendared the hearing of the motion to dismiss filed on May 15, 1984. The new hearing date of June 21, 1984, was noted on the bottom of the court's order dismissing the complaint, and dated May 24, 1984, and mailed to petitioner (See Appendix A, page E1). Petitioner received a copy of this order with the notation thereon after receiving the same order without the notation from the clerk of the court.

Petitioner also filed a request to voluntarily dismiss his action with 30 days leave to amend his complaint on May 22, 1984 (See Appendix A, page H). The district court, in response to this

request, filed a second order dated May 22, 1984, prohibiting petitioner from filing any further complaints which order arguably included any amended complaints. This second order was never stamped stamped entered; rather, it was only stamped "filed." See Appendix A, infra, page F . . The civil docket sheet indicates that such an order was entered March 23, 1984, two months prior to the time that the first order was entered. (See Appendix A, page D5.)

The first order filed on May 22, 1984, stated that "defendant has failed to state a claim for which relief can be granted against the moving defendants or any of the named defendants." This was apparently the grounds for ordering dismissal of petitioner's complaint. However, petitioner did not know which of

the defendants the court was referring to in these proceedings in that none of the moving parties had served a filed complaint on him. The district court's order of dismissal was sufficiently unclear to petitioner such that he filed a Petition for Review which could arguably have been considered a notice of appeal. This petition was filed on July 24, 1984. See Appendix A, infra, page I 1 .

On August 22, 1984, after receiving no response to his petition for review, petitioner filed a Notice of Appeal (see Appendix A, page J1-J2), and on September 6, 1984, petitioner filed an Amended Notice of Appeal clarifying his earlier notice by evidencing his intention to appeal both orders filed May 22, 1984. See Appendix A, page K1-K2. Because of the confusing nature of the court's dismissal order, petitioner requested clarification

from the Ninth Circuit by making it a part of his description of the action on his Civil Appeals Docketing Statement submitted to the Court of Appeals. See Appendix A, infra, pages L1-L4.

Respondents objected to the granting of petitioner's appeal as being untimely in that the so called Petition for Review was filed one day outside of the 60 period for filing a notice of appeal where the federal government is a party.

Petitioner responded to this objection arguing that the district court failed to provide him with due process by deciding the motion to dismiss before the scheduled hearing date, that he was confused by the court's order dismissing his complaint, that the court could allow him relief under Federal Rule of Civil Procedure 60(b) for execusable neglect,

and that the district court abused its discretion.

The Ninth Circuit ruled that petitioner's filing of his notice of appeal was not filed within 60 days of the entry of the district court's order dismissing the complaint with prejudice. Petitioner thereafter filed a motion for reconsideration and the Ninth Circuit allowed the parties to brief the issue as to whether the district court's order met the requirements of Federal Rule of Civil Procedure 58. After briefs were submitted by respondents and petitioner, the Ninth Circuit denied petitioner's appeal.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Sanctions A

Departure From The Stated Procedures and Rules of The Federal Court System, and The Accepted And Usual Conduct of Judicial Proceedings, That is Sufficiently Unfair and Prejudicial So As To Constitute A Violation of Due Process and Abuse of Judicial Discretion.

Petitioner should be allowed the granting of this writ of certiorari because he has been denied the opportunity to litigate substantial rights against non-moving parties, as well as against respondents and other moving parties without being allowed a hearing on the motions to dismiss his complaint. Often pro se plaintiff's such as petitioner have difficulty in articulating their claims in a manner that meets the formal requirements of legal pleading, however, given the

opportunity to present oral arguments at a hearing of their claims, some pro se plaintiffs are able to rebutt technical pretrial motions with sound, persuasive arguments that can overcome technical defects in pleading. Although the opportunity to be heard my not in the first instance result in a successful challenge to opposing motions, the pro se plaintiff can better understand his forum, and the minimum standards he must meet to remain in federal court when he has had an opportunity to communicate directly with the trial judge in open court. At the same time the trial judge can supervise the proper administration of justice with a pro se plaintiff early in the litigation when taking direct, clear action from the bench.

Although the Local Rules of the

district court for the Northern District of California allow a judge to determine a motion without oral argument, it appears contrary to the tenets of justice to do without first advising counsel for the parties and prior to the date set by the court for the hearing of motions. Local Rule 220-1 for the Northern District provides:

> All motions will be determined by the judge to whom the action or proceeding is assigned, except as may be otherwise ordered by the judge. They may be determined, in the judge's discretion, or upon request by counsel and with the judge's approval, without oral argument, or by conference telephone call. .....

Local Rule 220-2 provides in part:

> Except as otherwise ordered or permitted by a judge, all motions, except those made in the course of a trial or hearing, shall be noticed in writing on the motion calendar of the assigned judge for hearing not less than 28 days after service. The

> noticed hearing date and time shall appear on the cover page of each motion, and of any opposition and reply, in the space opposite the caption below the file number. .....

Local Rule 220-3 provides in part:

> Any opposition to the motion shall be served and filed not less than fourteen days preceding the noticed (or continued) date of hearing, and shall consist of affidavits or declarations where appropriate, a memorandum or brief, and a copy of a proposed form of order, separately captioned and not physically attached. A party not opposing a motion shall instead file a statement of no opposition within the time provided above. .....

In the case of the motions to dismiss the complaint which were filed in March and April of 1984, petitioner was allowed the time to respond to the motions with opposing papers, which he did, however he was given no prior notice that the court would decide these motions without oral

argument, thereby effectively denying him the opportunity to orally articulate his claims in such a manner that would make it clear to the court that there indeed existed a ground upon which relief could be granted.

To further defeat justice in this action, petitioner's complaint was dismissed against the moving party who filed its motion on May 15, 1984, before his time for filing opposition papers had expired; and it was further dismissed against non-moving parties without any opportunity being afforded to petitioner to make one oral argument in his behalf. Therefore, petitioner was not afforded the benefit of the district court's own local rules.

In the ordinary and accepted course of determining motions to dismiss complaints, plaintiffs are freely given

or allowed the opportunity to amend their complaints, especially where it cannot be shown that there are no facts stated in the complaint upon which relief can be granted. Federal Rule of Civil Procedure 15(a). Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, (1957).

If we construe petitioner's papers as constituting one complaint, then under Rule 15(a) he should have been allowed to amend his complaint without leave of court as a matter of right, and the court abused its discretion in denying such a right in dismissing the complaint with prejudice.

If petitioner's supplemental filing of a document substantially similar to his complaint is construed to constitute a filing of an amended complaint, the denial of his request to amend, regardless to the procedural inaccuracy of the request, i.e. that petitioner be allowed to file in

another court, the district court still abused its discretion in denying petitioner's complaint with prejudice, in that to do so would have in no way prejudiced the defendants, in fact, each of the moving parties expressed a willingness to accept alternative relief of requiring petitioner to file a more definite statement.

To be sure there was no doubt that the district court was denying petitioner the opportunity to amend his complaint, and in response to petitioner's further request to do so, the district court issued a second order specifically prohibiting the filing of any further complaint by petitioner, thereby effectively denying petitioner all opportunity to state corrected claims against any of the named parties, or any other person, without court approval.

By failing to follow its own rules and procedures, and Rule 15(a) of the Federal Rules of Civil Procedure, the district court made a significant departure from its stated and accepted procedures upon which petitioner relied to his detriment by waiting for the opportunity to present his oral arguments to the court, and the opportunity to amend his complaint. This departure was so harsh, unfair and prejudicial that it constitutes a denial of procedural due process, as well as an abuse of discretion; see Unites States v. Caceres, 440 U.S. 741, 752-53 & n. 15, 99 S.Ct. 1465, 1472 & n. 15 (1979).

2. The Ninth Circuit Court of Appeals Has Sanctioned Clear and Obvious Error By Denying Petitioner's Motion For Reconsideration.

The district court's order dismissing petitioner's complaint stated that "Defendant has failed to state a claim for which relief can be granted against the moving defendants or any of the named defendants." If this is the opinion of the court setting forth the grounds for dismissing petitioner's complaint, it is clearly erroneous and constitutes plain error requiring reversal because it prejudicially affects substantial rights of petitioner and is inconsistent with substantial justice, thereby violating Federal Rule of Civil Procedure 61 and 28 U.S.C. § 2111. See also Sears v. Southern Pacific Co., 313 F.2d 498 (1963), 9th Circuit. For the pro se plaintiff, this brief opinion provides little guidance in perfecting his pleading or in perfecting an appeal.

3. The Ninth Circuit Improperly Denied Petitioner's Motion for Reconsideration and Sanctioned An Injustice In So Doing Because The Requirements of F.R.P.C. Rule 58 Had Not Been Satisfied.

Petitioner had few arguments in his opposition papers with respect to the district court's order prohibiting him from filing any further complaints, including any amended complaints. Perhaps this accounts for the little attention given to this order by the Ninth Circuit. While the order is not defectively worded, the entry of the order never occurred in that it was never stamped entered, and it was incorrectly entered into the court's docket two months before it was filed. Therefore, this order does not meet the requirements of Rule 58 so as to make

petitioner's appeal untimely. See Calhoun v. United States, 647 F.2d 6 (9th Cir. 1981). Petitioner discovered the entered until 5-1-85.

What this order does is expresses and clarifys the district court's earlier order dismissing the complaint with prejudice. The Ninth Circuit apparently read these orders independently and paid no attention to the second order. However, they must be read as one decision otherwise the order dismissing the complaint, and the brief opinion therefor, failed to dispose of all matters before the court on May 22, 1984 (more particularly petitioner's request to file in another court, as well as his May 22, 1984, request to amend his complaint) and would not constitute a final disposition nor dismissal of the action.

It becomes more apparent that the

district court intended these two orders to be read as one upon closer inspection of the documents. They were both signed the same day, they were both filed the same day, and they were both filed at the same time of day, 4:02 p.m. By reading the dismissal order alone, it fails to address petitioner's opposing papers in their entirety, particularly, the request to file in another court. Thus, in the absence of oral argument, it must have been a partial, interlocutory decision at best, or a brief, albeit inaccurate, opinion, which are nonappealable and fail to satisfy the requirements of 28 U.S.C. § 1291. An appealable order must not only be final but complete. Hunter v. Federal Life Ins. Co., 103 F.2d 192 (8th Cir. 1939); Milton v. United States, 120 F.2d 794 (5th Cir. 1941).

If we consider the dismissal order alone, it is a non-appealable order. An order which dismisses a complaint without dismissing the action is ordinarily not appealable because it is not final unless the complaint cannot be saved by amendment. Jones v. Pitchess, 469 F.2d 678 (9th Cir. 1972) Dismissal of a complaint with prejudice for failure to state a claim upon which relief can be granted without mention of or attempt at amendment is a final appealable order. Cedar Coal Co. v. United Mine Workers of America, 560 F.2d 1153 (4th Cir.1977), cert. denied 434 U.S. 1047. The district court's order of dismissal could have been considered final had it not gone on to address the issue of amendment in its second order, thereby reviving petitioner's action until the second order became final. A contrary

interpretation would place petitioner in an untenable position of having a complaint on file that had been dismissed, a request to amend his complaint that had not been decided, and a prohibition on the filing of any further complaints.

When read together, as they should be, each date of entry of the two orders into the court's docket sheet must be considered and found proper to satisfy the requirements of Federal Rule of Civil Procedure 58 before petitioner's appeal may be considered untimely.

Since the order prohibiting the filing of further complaints was not entered properly into the court's records it failed to meet the test of Rule 58 and Calhoun v. United States, supra. As a result of its failure to consider the intent of the district court in issuing this order, as well as its effect on the first

order, the Court of Appeals erred in denying petitioner's motion for reconsideration on the basis that his notice of appeal was untimely filed.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the opinions and final order of the Ninth Circuit Court of Appeals.

Respectfully submitted,

Wallace McFarland

Wallace McFarland
1322 McAllister Street
San Francisco, California 94115
(415) 567-1446

Petitioner,
In Propria Persona

June 14, 1985

APPENDIX A

Original DOCKETED FILED Dec. 14, 1984
Phillip B. Winberry
Clk, U.S. Court of
Appeals

MEMORANDUM TO CLERK

I certify that the judges concerned concur in this order. Please file it.

United States Circuit Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALLACE McFarland, Plaintiff-Appellant, vs. BETHLEHEM STEEL CORPORATION, et al, Defendants-Appellees.	No. 84-2492 DC# CV-84-0499 WHO Northern California ORDER

Before: SNEED, KENNEDY and BOOCHEVER, Citcuit Judges

Appellees' motion to dismiss this appeal is granted. Appellant's notice of appeal was not filed within 60 days of the entry of the district court's order dismissing the complaint with prejudice.

Fed. R. App. P. 4(a) (1); see Pettibone v. Cupp, 666 F. 2d 333 (9th Cir 1981). The district court's denial of appellant's motion for an extension of time to appeal precludes us from exercising jurisdiction over the appeal at this time. See Diamond v. United States District Court, 661 F 2d 1198 (9th Cir., 1981).

MoCal 12/10/84

DOCKETED

Original

MEMORANDUM TO CLERK

Filed Jan. 18, 1985
Phillip B. Winberry
Clk, U.S. Court of
Appeals

I certify that the judges concerned concur in this order. Please file it.

Robert M Kennedy
UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALLACE McFARLAND, Plaintiff-Appellant, vs. BETHLEHEM STEEL CORPORATION, et al. Defendants-Appelles	No. 84-2492 DC# CV-84-0499 WHO Northern California ORDER

Before: SNEED, KENNEY and BOOCHEVER, Circuit Judges

Appellant's motion for reconsideration indicates that this appeal may have been dismissed in error. Although the district court's order entered May 23, 1984, disposed of the action as to all claims and all parties, the record does not reflect the entry of a separate judgment in complaince with

Fed. R Civ. P. 58. Appellant's time to appeal may therefore not have run at the time he filed a notice of appeal. See Calhoun v. United States, 647 F. 2d 6 (9th Cir. 1981).

Within 14 days of the entry of this order, appellees shall file a response to the motion for reconsideration. Fed. R. App. P. 40

MoCal 12/10/84

DOCKETED Original

Filed Mar. 19, 1985
Philip B. Winberry
Clk. U. S. Court
of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALLACE McFARLAND,	)	
	)	
Plaintiff-Appellant,	)	No. 84-2492
	)	
vs.	)	DC# CV-84-0499 WHO
	)	
BETHLEHEM STEEL CORPORATION,	)	
	)	Northern
et al,	)	California
	)	
Defendants-Appellees.	)	ORDER

Before: SNEED, KENNEDY and BOOCHEVER, Circuit Judges

The motion for reconsideration is DENIED. Judge Boocheber dissents and would grant the motion.

MEMORANDUM TO CLERK McFarland v. Bethlehem

Date: March 14, 1985

All judges concerned having concurred in the within order, you will please file

UNITED STATES CIRCUIT JUDGE

-C-

Fed. R Civ. P. 58. Appellant's time to appeal may therefore not have run at the time he filed a notice of appeal. See Calhoun v. United States, 647 F. 2d 6 (9th Cir. 1981).

Within 14 days of the entry of this order, appellees shall file a response to the motion for reconsideration. Fed. R. App. P. 40

MoCal 12/10/84

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440	1	560	J 7114	06075

Jury Dem	Docket yr.	#
P	84	0499W1

Plaintiffs
05 McFarland, Wallace

Appeal

Defendants
Bethlehem Steel Corp., Dr. Elton G. Welke, an ind. U. S. Dept. of Labor & Deputy Commissioners Office & the Shipyard & Marine Shop Laborers L886, McGuinn, Hillsman & Palefsky, Parrish, Morariarty & Smith & Aimola, Lewis Phon, an Ind. Does 1-30

I herecy certify that the attached instrument is a true copy of the original on file in my office

William Whittaker,
Clk,U.S. Dist. Court
No. Dist of California

by Patricia Hanson,Dep. Clk,

Date 4/25/85

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JS 6 5/23/84

Attorney's Cont. Sheet

C-84-0499 WHO

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(Atty's for Shipyard & Marine Shop Local 886)

1984 CLOSED CARD PREPARED C-84-0499 WHO

2/2 1. Complaint; no process

2. Clerk's Order Setting Status Conference 5/11/84 at 9:00 AM

2/13 3. Defendant's Return of Notice & Acknowledgment of Receipt of Summons & Complaint

4. Plaintiff's Civil Rights Violation & Discrimination, Breach of Contract, Fraud & Misrepresentation; Supplementary & Corrections to the 1st Cause of Action

3/9 5. Defendants McGuinn, Hillsman & Palefsky's Ex Parte Application for Extension of Time to Answer etc Complaint to & including 3/30/84

6. Declaration of F. D. Baker in Support of #5

3/14 7. Plaintiff's Civil Rights Violation & Discrimination, Breach of Contract, Fraud & Misrepresentation

3/16 8. Plaintiff's Reply to Defendant Bill Parrish's letters dated 3/2/84 and 2/17/84, etc.;

*

3/ 30 9. Defendants McGuinn, Hillsman & Palefsky & J. Hillsman's Notice of Motion to Dismiss Plaintiff's Complaint for lack of Subject Matter Jurisdiction; For Failure to State a Claim upon which Relief can be Granted; or to Require a More Definitive Statement; 5/11/84 at 1:30 PM

3/23 * Summons Issued

1984

3/30 10. Return of Summons as to U. S. Dept. of Labor, executed 3/23/84

11. Return of Summs as to Shipyard & Marine Shop Laborers Local 886, executed 3/23/84

12. Executed 3/23 as to Unknown as unexecuted

13. Executed 3/23/84 as to Bethlehem Steel Corp. as executed 3/23/84

14. Executed 3/23/84 as to Lewis Phon as executed 3/23/84

15. Executed 3/23/84 as to Parrish, Moritarty, Smith & Aimola executed 3/23/84

16. Executed 3/23/84 as to McGuinn, Hillsman & Palefsky executed 3/23/84

17. Executed as to U. S. Dept. of Labor Office of Workers Comp. Programs executed 3/23/84

18. Programs executed 3/23/84 as to Dr. Elton G. Welke on 3/23/84

See Sheet "A"

1984

4/5 19. Clerk's Notice Motion of McGuinn, Hillsman & Palefsky to dismiss set 4/27/84 & Status Conference

4/12 20. Defendant Bethlehem Steel Corp's Notice of Motion to Dismiss Complaint for Lack of Subject Jurisdiction & for failure to State a Claim upon which relief can be granted or in alternative to Require More Definite Statement & for Stay of Proceedings; 5/24/84 at 1:30 PM

21. Memorandum of Points & Authorities in Support of #20

Received: Proposed Order Granting Motion to Dismiss

4/20 22. Defendant Parrish, Moriarity & Smith Notice to Dismiss Compaint for Failure to State a Claim upon which Relief can be Granted for Lack of Subject Matter Jurisdiction or to Require a More Definite Statement; 5/25/84 at 1:30 PM

23. Memorandum of Points & Authorities in Support of #22

24. Declaration of Denis F. Shanagher in Support of Motion to Dismiss Complaint Exhibits A-E

Received: Proposed Order Dismissing Plaintiff's Complaint for Failure to State a Claim upon which Relief can be Granted and for Lack of Subject Matter Jurisdiction

26 25. Plaintiff's Notice of Motion for Further Hearing; 5/25/84 at 1:30 PM

1984

4/30 26. Plaintiff's Objection to Defendant's Notice of Motion to Dismiss; etc.

Received: Proposed Order for Motion for Further Hearing

5/15 27. Defendant Shipyard & Marine Shop Laborers Local 886's Notice of Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim upon which relief can be granted or to require a more definite statement; 6/15/84 at 1:30 PM

28. Memorandum of Points & Authorities in Support of #27

Received: Proposed Order Granting Motion to Dismiss

1984

5/23 29. Order: Complaint dismissed with prejudice; see document Entered 5/23/84 Clerk
Copies mailed to parties of record Clerk

30. Plaintiff's Notice of Motion to Amend

31. Order: Clerk of Court shall not file any further complaint prepared by Mr. Wallace McFarland only lodge them & judge will consider complaint and file only if it has merit Entered 3/23/84 Clerk
Copies mailed to parties of record

5/24 32. Plaintiff's Memorandum of Points & Authorities in Opposition to Defendants' Moation to Dismiss or More Definite Statement; 5/25/84 at 1:30 PM

7/24 33. Plaintiff's Petition for Review
Order

8/22 34. Plaintiff's Notice of Appeal

9/6 Received: Plaintiff's notice of motion to extend time to appeal & proposed order - Judge will not sign. Clerk
Plaintiff's declaration in support of motion
Amended Notice of Appeal

35. Plaintiff's declaration in support of motion to extend time for appeal

36. Plaintiff's amended notice of

1984

appeal_____USCA #
fee paid. Docket fee payment notification form mailed to USCA and parties of record.

9/25 37 Defendant attorneys Parrish & Morarty notice of change of address

1984

10/2		38.	Defendants McGuinn, Hillsman and Palefsky & Hellsman's notice of motion & motion to dismiss
11/2		39.	Minutes (c/r Carl Pline) re: defendant's motion to dismiss plaintiff appeal as untimely is DENIED
12/28		40.	Plaintiff's notice of motion to reconsider.
11/18	*	41.	Plaintiff's memo of points and authorities in opposition to motion to dismiss

1985

4/10		42.	Certified copy of the mandate from USCA that judgment of USDC is dismissed.

Filed
May 22 4:02 PM '84
William L. Whittaker
Clerk
U. S. District Court
No. Dist of CA

Entered in Civil Docket May 23, 1984

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

WALLACE McFarland, Plaintiff vs. BETHLEHEM STEEL CORPORATION, etc., et al. Defendants	No. C-84-0499 WHO ORDER

Defendants Bethlehem Steel Corporation, Parrish, Moriarity and Smith, McGuinn, Hillsman and Palefsky, and John Hillsman move to dismiss this action. The Court has reviewed the motions, supporting memoranda, the files in this case, and has taken judicial notice of the following cases: McFarland v. Bethlehem Steel Corp. and Dr. Elton. G. Welke Nos. 82-5187 SC and 82-5188 SC; Mc Farland v.

Bethlehem Steel Corp., OWCP Nos. 13-14151; McFarland v. United States Department of Labor, et al., No. 78-2283 (9th Cir. Sept. 19, 1980). (Memorandum Opinion).

Defandant has failed to state a claim for which relief can be granted against the moving defendants or any of the named defendants.

Accordingly, and good cause appearing therefor,

IT IS HEREBY ORDERED that the complaint is dismissed with prejudice.

Dated: May 22, 1984

William H. Orrick
United States District
Judge

Copies mailed to parties of record.

May 24, 1984

Exhibit A

Filed

May 22 4:02 PM '84

William L. Whittaker
Clerk
U. S. District Court
No. Dist of Ca.

Entered into Civil Docket May 23, 1984

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

WALLACE McFARLAND, Plaintiff vs. BETHLEHEM STEEL CORPORATION etc., et al. Defendants	No. C-840499 WHO ORDER

Plaintiff has filed four identical actions in this Court that name virtually the same parties as defendants; three of the actions have been dismissed. It is the finding of this Court that Plaintiff is abusing the processes of this Court.

Accordingly,

IT IS HEREBY ORDERED that the Clerk of

Court shall not file any further complaint prepared by Mr. Wallace McFarland. If Mr. McFarland attempts to file any such complaint; it will be lodged with the Clerk and be considered by any Judge of the Northern District, and then filed only if it is found to have any merit.

Dated: May 22, 1984

William H. Orrick
United States District Judge

Exhibit A

May 24, 1984

WALLACE McFARLAND
1322 McAllister Street
San Francisco, CA 94115

IN PROPRIA PERSONA
(415) 567-1446

Received
Apr. 26, 1984
William L.
Whittaker
Clerk, U. S.
District Court
No. Dist. of CA

Original Filed
Apr. 30, 1984
William L.
Whittaker
Clerk, U. S.
District Court
No. Dist of CA

IN THE UNITED STATES DISTRICT COURT

FOR THE NOTHERN DISTRICT OF CALIFORNIA

WILLIAM McFARLAND, Plaintiff

v.

BETHLEHEM STEEL CORPORATION, DR. ELTON B. WELKE, an individual, U. S. DEPARTMENT OF LABOR, and the DEPUTY COMMISSIONERS' OFFICE, and SHIPYARD AND MARINE SHOP LABORERS' L 886, MCGUINN, HILLSMAN & PALEFSKY, PARRISH, MORIARITY & SMITH, & AIMOLA, LEWIS PHON, an individual, Does one through Thirty)

CIVIL ACTION
No. C84 0499
CIVIL RIGHTS
VIOLATION & DISCRIMINA -
TION, BREACH OF CONTRACT
FRAUD & MIS-REPRESENTATION

To Defendants' Attorney of Record: Mr. W. Martin Tellegen

Plaintiff hereby objects to Defendants' Notice of Motion to Dismiss Plaintiff's Complaint dated January 31, 1984, the allegation dated March 30, 1984, should be denied. Plaintiff's ofjections are based on the cover sheet issued by the District Court.

However, should the Honorable William H. Orricke choose to accept Defendant's Notice of Moation for Consideration, plaintiff wishes to offer the following comments in reply by requesting that plaintiff be allowed to file in another court.

Defendant alleges no violation or wrong doing on or about February 8, 1982.

Plaintiff denies any such allegation and it is plaintiff's belief that he is entitled to a day in court.

Dated: April 23, 1984

Respectfully submitted
Wallace McFarland
Wallace McFarland

Att WHO

WALLACE McFARLAND
1322 McAllister Street
San Francisco, CA 94115

Propria Personna
(415) 567-1446

Received
May 22, 1984
Clerk, U. S. Dist.
Court, San Francisco

IN THE UNITED STATES DISTRICT COURT
FOR THE NORHTERN DISTRICT OF CALIFORNIA

WALLACE McFARLAND, Plaintiff)
)
vs.)
)
BETHLEHEM STEEL CORPORATION,)
DR. ELTON G. WELKE, an indivi-)
dual, U. S. DEPARTMENT OF LABOR)
and the DEPUTY COMMISSIONERS')
OFFICE, and the SHIPYARD AND MARINE)
SHOP LABORERS L 866, MCGUINN , HILLS-)
MAN & PALEFSKY, PARRISH, MORIARITY)
& SMITH AND AIMOLA, LEWIS PHOn, an)
individual, Does one through thirty)

Civil Action No. C 84 0499
WHO
Notice of Motion to Amend

To the Honorable William H. Orrick:

Dear Judge Orrick:

In regard to Case No. 84 0499, Calendar for May 25, 1984, defendant's Motion to Dismiss for Lack of Subject Matter, Jurisdiction, etc. Plaintiff McFarland has consulted persons in federal practice and therefore requests that this

Court grant defendant's Motion to Dismiss with 30 (thirty) days leave to amend.

Respectfully submitted,

Wallace McFarland

Wallace McFarland

Dated: May 22, 1984

WALLACE McFARLAND
1322 McAllister Street
San Francisco, CA 94115

In Propria Persona
(415) 567-1446

Filed
July 24, 1984

UNITED STATES DISTRICT COURT
NORTHERN DIVISION OF CALIFORNIA

PETITION FOR REVIEW

WALLACE McFARLAND, Plaintiff

v.

U. S. DISTRICT COURT, BETHLEHEM STEEL CORPORATION, DR. ELTON G. WELKE, an individual, U. S. DEPARTMENT OF LABOR, and the DEPUTY COMMISSIONERS' OFFICE and the SHIPYARD AND MARINE SHOP LABORERS L 866, McGUINN, HILLSMAN, PALEFSKY, PARRISH, MORIARITY, SMITH & AMOLA, LEWIS PHON, an individual, Does One Through Thirty

Defendants

Civil Action No. C 84 0499
82-5187-SC; 82-5189-SC;
No. 82 LMC 101-SC;
OWCP No. 13-14151;
No. 78-2283 WHO

Petitioner Wallace McFarland petitions the Court for review of the decision of United States District Court, Northern Division of California, No. C-84-0499 entered in this action on May 23, 1984

Names of the parties to this matter

and names and addresses of their respective attorneys are:

United States District Court, Northern District of California

C. Mark Humbert, Esq.
Hall, Henry, Oliver & McReavy

Frederick D. Baker, Esq.
Sedgwick, Detert, Moran & Arnold

Parrish, Moriarity & Smith

Lewis Phon, Esq.

U. S. Department of Labor

Shipyard & Marine Shop Laborers Local No. 886

U. S. Department of Labor
Office of Administrative Law Judges

Ms. Nancy C. Aimola
McCarthy & Schwartz

Dennis F. Shanagher
Bronson, Bronson & McKinnon

Dr. Elton G. Welke

Dated: July 23, 1984

Wallace McFarland
In Propria Persona

WALLACE McFARLAND
1322 McAllister Street
San Francisco, CA 94115

In Propria Persona
(415) 567-1446

Filed
Aug.22, 1984
Clerk,US. District
Court, San Francisco

UNITED STATES DISTRICT COURT
DISTRICT COURT FOR THE NORTHERN DIST. OF CA.
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT COURT

WALLACE McFARLAND, Plaintiff

v.

UNITED STATES DISTRICT COURT, BETHLEHEM STEEL CORPORATION, DR. ELTON G. WELKE, an individual, U. S. DEPARTMENT OF LABOR and the DEPUTY COMMISSIONERS' OFFICE, SHIPYARD AND MARINE SHOP LABORERS L866, McCUINN, HILLSMAN, PALEFSKY, PARRISH, MORIARITY, SMITH & AIMOLA, LEWIS PHON, an individual,

Defendants

Civil Action No. C-84-0499
Notice of Appeal from
Judge WHO'S Order

TO THE HONORABLE JUDGE WILLIAM H. ORRICK AND ATTORNEYS OF RECORD:

Notice is hereby given that Plaintiff Wallace McFarland hereby on this date filed a Notice of Appeal from Judge William Orrick's Order, Civil Action No. C-84-0444 entered in this action on May 23, 1984, based on

Budde v. Ling-Temco Vought, Inc. 511 F. 2d, 1033, et etc.

Names of the parties to this matter and names and addresses of their respective attorneys are:

C. Mark Humbert, Esq.
Wall, Henry, Oliver & McReavy
100 Bush Street
San Francisco, CA 94104

Mocine, Plotz & Egglest
1440 Broadway, Ste. 100
Oakland, CA 94612

Frederick D. Baker, Esq.
Sedgwick, Detert, 9th Fl.
San Francisco, CA
94111

U. S. Dept. of Labor
Office of Administrative Law Judge
211 Main Street
San Francisco, CA
94108

U. S. Department of Labor, Office of Administrative Law Judges

Ms. Nancy A. Aimola
McCarthy & Schwartz

Dennis F. Shanagher
Bronson, Bronson & McKinnon

Dr. Elton B. Welke

Date: July 23, 1984

Wallace McFarland

Wallace McFarland
In Propria Persona

WALLACE McFARLAND
1322 McAllister Street
San Francisco, California 94115
(415) 567-1446

IN PROPRIA PERSONA

Filed
Sept. 6, 1984
U. S. Dist. Court
San Francisco

IN THE UNITED STATES DISTRICT COURT

FOR THE NORHTERN DISTRICT OF CALIFORNIA

WALLACE McFARLAND,

Plaintiff

vs.

BETHLEHEM STEEL CORPORATION, DR. ELTON G. WELKE, an individual, U. S. DEPARTMENT OF LABOR, and the DEPUTY COMMISSIONERS' OFFICE, and the SHIPYARD AND MARINE SHOP LABORERS L 866, MCGUINN, HILLSMAN & PALEFSKY, PARRISH, MORIARITY & SMITH & AIMOLA, LEWIS PHON, an individual

Defendants

No. C 84-0499 WHO

AMENDED

NOTICE OF APPEAL

Notice is hereby given that Wallace McFarland, Plaintiff (and Appellant) above named, appeals to the United States Court of Appeals for the Ninth Circuit from the order dismissing Plaintiff's complaint with

prejudice for failure to state a claim for which relief can be granted entered in this action on May 22, 1984, and from the Order prohibiting the filing of any further complaint prepared by plaintiff without prior review by a Judge.

NOTICE OF APPEAL

of this court also entered in this action on May 22, 1984 and on July 24, 1984. Plaintiff Wallace McFarland filed a petition for review and got no response.

On August 22, 1984 Plaintiff Wallace McFarland filed a Notice of Appeal and got no response.

Based on Rule 4, Plaintiff Wallace Mc Farland is paying the docket fee which is enclosed for filing this Notice of Appeal.

Names of persons to this matter and names and addresses of their respective attorneys known are:

M. Mark Humbert, Esq.
Hall, Henry, Oliver & McReavy
100 Bush Street
San Francisco, CA 94102

Mocine, Plotz & Eggleston
1440 Broadway, Ste.1000
Oakland, CA 94612

Frederick D. Baker, Esq.
Sedgwick, Detert
111 Pine, 9th Fl.
San Francisco, CA 94111

U. S. Dept. of Labor
Office of Adm. Law Judges
211 Main Street
San Francisco, CA 94105

Parrish, Moriarity & Smith
2710 California St.
San Francisco, CA 94115

Ms. Nancy C. Aimola
McCarthy & Schwartz
333 Market Street, 32nd Fl
San Francisco, CA 94108

Lewis Phon, Esq.
1282 California St.
San Francisco, CA 94109

Dr. Elton G. Welke
516 Sutter St., Ste. 600
San Francisco, CA 94102

U. S. Dept. of Labor
450 Golden Gate Ave.
San Francisco, CA 94102

Respectfully submitted,

Wallace McFarland

Wallace McFarland
In Propria Persona

Dated: September 4, 1984

United States Court
of Appeals for the
Ninth Circuit
P. O. Box 547
San Francisco, CA 94101

Court of Appeals
Docket # 84-2492

Civil Appeals
Docketing Statement

Case Name: Wallace McFarland, Plaintiff/
v. Bethlehem Steel Corp, Defendant

U. S. Dist. Court, No. Div. of Ca.

District Court Docket # 044-0499 WHO,
District Judge W. H. Orrick

Party filing appeal/petition: Wallace McFarland

A. Timeliness of Appeal or Petition for Enforcement of Review

(1) Date of entry of judgment appealed from
May 23, 1984
Petition filed July 24, 1984

(2) Date of notice of appeal: Notice of Appeal filed 8/24/84
Amended Notice of Appeal filed 9/6/84

(3) Authority fixing time limit for filing notice of appeal - Fed R App P 4 (2) (5) x

(4) Service date of any motion listed in Fed R App P. 4 (a) (4)

(5) Time limit for filing notice of appeal or petition: July 24, 1984

A. Appeal from District Court

(1) Is the order appealed from a final order, i.e., does it dispose of the action as to all claims by all parties? Yes.

(2) If the order is not a final disposition, did the district court direct the entry of judgment in accordance with Fed. R. Civ P 54 (b)? No.

(3) If not final, is the order properly appealable as an injunctionunder 28 U. S. C. §1292 (2) (1)? No.

(4). If none of the above applies, what is the basis for seeking appellate review: Alleged prejudicial error. See Erskine v. UPHAM, 56 Cal App 2d 235, 132 P 2d 219, 228 TRE v. Stn. Fin & Mill Co. 58 WYC 9, 123, F 2 378, 380

C. Review of Agency Decision:

D. Related Cases: List all related cases pending in this Court of Appeals as defined in Ninth Circuit Rule 13 (b) (4): None.

E. Nature of Relief Sought Below:

(x) Damages: Amount sought 560,750
Amount granted - 0
(x) Injunctive Relief- preliminary or
(x) permanent
granted or denied (x)
(x) attorney's fees amount sought_____ _____

F. Nature of Disposition Below:
(dismissal)

G. Length of Trial or Hearing: Equivalent of Nn Hearing Allowed

H. Preparation of Reporters Transcript? No.

I. Brief description of nature of action and result below:

(a) Failure of the District Court to allow a hearing on the defendant's motion to dismiss.

(b) Failure of the District Court to allow oral argument from plaintiff on defendant's motion to dismiss.

(c) Failure to consider plaintiff's May 23, 1984 request for dismiss with prejudice (notice of motion to amend and/or incorporate a response to said request in its order of May 23, 1984.

(d) Dismiss of plaintiff's claims with prejudice against defendants who have never responded to the complaint filed and served upon them.

(e) Judge Orricks' Order dated May 23, 1984 is not "clear" it is alleged belief that Judge Orrick made a prejudicial Error (see Exhibit A)

However, there are still six procedural matters prnding which require resolution. The trial judge dismissed three that had filed Notices of Motion to dismiss or to require a more definite statement in which continued on 1.

J. Issues to be Raised on Appeal:

1. Alleged viilation of plaintiff McFarland's constitutional rights.

2. Alleged Discrimination: Baker v. California Land Title Co. D. D. Cal, 349 Supp. 235, 238, and 239, Title VII of 1964 Civil Rights and under the Longshoremen's and Harbor Workers' Compsnsation Act and the Freedom of Information Act, Sec. 7 through 49, and also see § 5 U.S.C.A. 552.

3. Alleged Prejudice: State Ex Rel Mitchell v. Sage Stores Co, 157 Kan 622, 143 P 2d 652, 655 Adverage Man Test: U. S. v.

Haynes, C. A. Conn, 398 F qd 980, 984.

4. Alleged Fraud: Goldstein v. Equitable Life Ass. Soc. of U. S., 160 Misc §64, 289, N.Y.S. 1064, 1067, Johnson v. McDonald, 170 OKL 117, 39 p. 2d 150. Citizens Standard Life Ins. Co. v. Gilley, Tex. Ci v App 521 S. W. 2d 354, 356. Continue on Letter J.

K. Standard of Appellate Review as defined in Ninth Circuit Rule 13 (b) (2) (Specify the proper standard of review to be applied by the Court of Appeals for each issue to be raised, citing relevant authority).

(1) The standard of review as to issue as above is that the Court's decision and Order was "Clearly erroneous" in not offering plaintiff a hearing on my motion to amend and defendant's motion to dismiss.

(2) The standard of review as to Issues B, C and D is that the Court abused its discretion in ordering dismissal with prejudice in favor of all defendants.

L. Do you believe that settlement is feasible in this case? Yes.

M. Do you desire oral argument in this appeal? Yes.

If yes, why in your opinion should oral argument be heard? In all fairness, plaintiff Wallace McFarland feels that the History of this case Warrants Oral Argument.

N. Attorneys Representing Appelle/ Respondent

Appellee: Bethlehem Steel Corporation

Attorney: Parrish, Moriarity, Smith

Telephone: (415) 921-6831

Address: 1750 Van Ness Avenue

San Francisco, CA 94109

Appellees: C. Mark Humbert, Esq., Hall, Henry, Oliver & McReavy

Address: 100 Bush Street,

San Francisco, CA 94104 Telephone: (415) 982-130

Appellee: Shipyard and Marine Shop Laborers Union Local 886

Attorney: Mocine, Plotz and Eggleston

Address: 1440 Broadway, Suite, 100

Oakland, California Telephone: (415) 452-1300

O. Attorney of Appellant (If Pro Se) Filing Docketing Statement

Name: Wallace McFarland, 1322 McAllister St.

San Francisco, California Telephone: (415) 567-1446

Signature: Wallace McFarland 10/4/84

(If this is a joint statement, add names and of other counsel below on an additional sheet, together with cwrtification that they all have concurred in the filing of this statement).

A copy of the judgment or order appealed from any any opinion, findings of fact or conclusions of law supporting the judgment or order must be attached to all copies of the docketing statement filed with this Court.

This docketing statement must be accompanied by a proof of service of the statement on opposing counsel.

7535f/0038c
(o2/24/84)

Attached Statement

(I)

RELIEF can be granted.

(f) Judge Orrick dismissed defendant Dr. Elton B. Welke without his request to dismiss. It is my alleged belief that Judge Orrick based his decision on Judge Fauster Vittone's erroneous decision and order dated May 18, 1977. However, there are still five procedural matters pending which require resolution. See Exhibit A.

(g) Judge Orrick set a date for plaintiff and defendant's attorney Mocine, Plotz & Eggleston on June 21, 1984 which requires resolution. See Exhibit A, and also see Vernon v. Crist 28 N.). App 631, 222 S. E. 2d 445, 447.

(h) It is my alleged belief that Judge Orrick

was negligent by applying his Order against plaintiff with prejudice.

(i) Judge Orrick compounded the issues by taking judicial notice of the following cases McFarland v. Bethlehem Steel Corp., OWCP No. 82 LEC 101 S; McFarland v. Bethlehem Steel Corp, OWCP No. 13014151; McFarland v. United States Department of Labor, et al, No. 78-2283 (9th Cir. Sept. 19, 1980).

(j). It is my alleged belief that the (9th Cit.) based its decision on the fact that there was no evidence of injury. Since that date, plaintiff has discovered new evidence of injury.

See Kash N. Karry Wholesale Supermarkets, Inc. v. Garcia, Fla. App., 221 So. 2d 786, 788. Chromalloy A. Corp v. Alloy Surfaces Co., D. C. Del, 55 F. R. D. 406, 409, Subsequently U. S. v. De Pugh, D. C. Mo., 266, F. Supp 417, 434. The court states Motions for new trial based on newly discovered evidence must generally be made within a specified time period, e.g., Fed. R Crim p.

(I)

Rule 33, See Exhibit , attached hereto. See Painters v. State 45 Wash 2d 819, 278 p. 2d 304, 303. In re Adoption of P. J. K. Mo. App 359, S. W. 2d 360, 363.

(k) It is my alleged belief that the defendants violated Section 31 of the Longshoremen's and Harbor Workers Compensation Act, (as amended).

(l) Further, It is also my alleged belief that the defendants and each of them has violated plaintiff Wallace McFarland's civil rights under the Act, Section 7, through Section 49 from March 23, 1970 through June 21, 1984, and the defandants have violated plaintiff Wallace McFarland's rights under the Freedom and Information Act, see (5 U. S. A. 552).

(m) On April 8, 1981 Deputy Commissioner Gerald T. Cullen issued a finding of fact, Quashed plaintiff's request for subpoenaes aside from issuing respondent subpoenaes to obtain all of plaintiff's records on the cases Judge Orrick dismissed.

(n) On July 2, 1981 Deputy Commissioner Stanley M. Hazlak's Recommendation to the Office of Administrative Law Judges as follows:

"It appears that the claimant's continued litigation of this matter is unnecessary litigation within the framework of Section 26 of the Act and he is responsible for costs."

(O) Mr. Hazlak's Recommendation was clearly false with the intent to bring plaintiff Wallace McFarland to his knees and an end to an unjustifiable litigation. It is my alleged belief that Judge Orrick's Order was within the same framework of People v. Lopez 251 Cal. App. 2d 918, 60 Cal Rprt 72, 76 also People v. Bernhardt, 222 C 2d 567, 35 Cal Rptr. 401, 419.

(p) After Deputy Commissioner Stanley Hazlak and the attorney for respondent Nancy A. Aimola reopened my case with the intent to collect money from plaintiff. Plaintiff further demanded Section 922 and newly dicovery and also Respondent Employer and Cross Petitioner Bethlehem Steel Corporation, seeking relief under Section 26 of the Act, 33 U. S. C. 926.

Case No. 82-1377A, Prior BRB No. 77-462, OALJ No. 82-LHCA-101 S. Prior OALJ No. 76, LHCA-566, and Case No. 13-14151 is still pending before the Benefits Review Board.

(g) It is interesting to note that only two days before plaintiff and the defendants had agreed to argue and submit significant records and issues, Judge Orrick took judicial notice of the above cases and dismissed the entire case without prejudice without allowing plaintiff an opportunity and/or chance to file a more definite statement and to be heard. It appears that plaintiff Wallace McFarland's notice of appeal is well taken and plaintiff prays that this appeal be granted.

L-8

(J)

Positive Fraud: Nocatee Fruit Co. v. Fosgate C.C.A., Fla., 12 F 2d 250, 252. ALLEGED FRAUDULENT CONCEALMENT: Fundunburks v. Michigan Mut. Liability Co. 63 Mich. App. 405, 234 N. W. 2d 545, 547. Alleged Fraudulent Conversion.

L-9

3. Alleged Framed: Tristate Transit Co. of Louisiana v.Westbrook, 207 Ark. 270, 180 S. W. 2d 121, 125.

4. Alleged Error: (Alleged "Writ of Error"). Alleged Assignment of Errors, e. g. Fed. R, App. P. 28. Alleged Error Apparent of Record, Parks v. Parks, 68 App. D. C. 363, 98, F. 2d 235, 236.

Alleged Harmful Error: Alleged Plain Error Rule: U. S. v. McCord, 166 U. S. App. D.C. 1, 501 F 2d 334, 341. U. S. v. Cox Ca Tex. 536 F 2d 65, 69. State v. Thornton 38 N.J. 380, 185 A 2d 9, 18.

5. Alleged Prejudicial Error: Erskine v. Upham, 56 Cal. App. 2d 235, 132 P. 2d 219, 228; Trepanier v. Standard Min. & Mill Co., 58 Wyo. 29, 123 P. 2d 378, 380. Fed. R Civil P. 59; State v. Gilcrist, 15 Wash. App 892, 552, P. 2d 690, 693.

6. Alleged mis-conduct and abusing his power under State v. Draper, 83 Utah 115, 27 P 2d 39; Ex part Jones, 246 Ala., 433, 2 So. 2d 859, 862. A discretion exercised to an end

or purpose.

On June 3, 1976, September 3, 1976 and on February 8, 1982 plaintiff was inadequately represented.

On May 18, 1977 and on February 8, 1982, and May 22, 1984, plaintiff was the victim of court action.

-L-11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

Filed Nov. 2, 1984
William L. Whittaker,
Clerk

Date: 11/2/84

Case # C-84-499 WHO Judge: William H. Orrick

McFarland v. Bethlehem

No Appearance No Appearance

Dep. Clerk: Linda J. Brooks, Rptr: Carl Pline

(DEFT) (39)

(x) 1. Motion to dismiss II appeales
2. Untimely

(x) Motions (x) Granted

ORDERED AFTER HEARING:

Any motion filed to extend time to file as

-N-

is denied.

-N-1

UNITED STATES COURT OF APPEALS

(ARMS) FOR THE NINTH CIRCUIT

Received
Phillip B. Winberry
Clerk, U.S. Court of
Appeals Sept. 24, 1984

Docketed

Docket Fee Payment Notification

(1) Short Case Title: McFarland v.
Bethlehem Steel Corp.,
et al

U.S. Court Docket #: 84-2492

U. S. District Court for the Northern District
of California
U. S. District Court Docket #: C-84-0499-WHO

Appellant's Name: Wallace McFarland
(2)
Date Notice of Appeal Received/Lodged/Filed

Amended 8/22/84 & 9/6/84

(3) A. (x) U. S. Court of Appeals Docket
Fee Paid 9/21/84

Form Completed in the U. S. District Court

by: Robert N. Brassfield

CSA

A9-014 (8/22/80)

-O-

Case File 84-2492

Clerk's Fees

T. 24 number assigned Appellant

$65.00

T. 27 Docketed Cause and Entd Appearance of Counsel for Aple, Aplt in Pro Per

9 Filed Aplt's Civil Docketing Statement (CONFATT) 10/4 Ogm

16 Filed order (Mot. A y, NPV). The Conference Attorney has reviewed the CAO filed in this case and has determined that a prebriefing conference is not necessary. The provisions of Rule and Appendix C of the Rules of the U. S. Court of Appeal for the 9th Cir. will have no further application to this case. The clk will notify the parties of the due date for the opening brief. Subsequent briefs will be filed within the time provided by Rule 31 (a) of the FRAP, etc. (10/16) tsp.
(Released from Prebriefing Conference Program)

18 Received Aplt's Amended Civil Docketing Statement (CONFATT) 10/18 ogm

No Action Needed

CV #84-0499 WHO 84-2492

Appeal Filed: Aug. 22, 1984
Amended: Sept. 6, 1984

Filed in D. C. Feb. 2, 1984

N/S 3/400

Honorable William H. Orrick

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CIVIL RIGHTS DC, Northern California (S.F.)

WALLACE McFARLAND,

Plaintiff/Appellant

vs.

BETHLEHEM STEEL CORPORATION, DR. ELTON G. WELKE, and individual, U. S. DEPARTMENT OF LABOR, and the DEPUTY COMMISSIONER'S OFFICE, and the SHIPYARD AND MARINE SHOP LABORERS' LOCAL 886, et al.

Defendants/Appellees.

For Appellant: Wallace McFarland, Pro Per
1322 McAllister Street, San Francisco, CA
94115 (415) 567-1446

For Appellee: Kenneth E. Keller, Esq. of
Bronson, Bronson, & McKinnon
555 California Street, San Francisco, CA
94104 (415) 391-4500
(for Parrish, Moriarty & Smith)
see clerk's card for add'l

Wallace McFarland
1322 McAllister Street
San Francisco, California 94115
(415) 567-1446

IN PRO PER

Received
Phillip B. Winberry
Clk, U. S. Court of Appeals
Feb. 7, 1985
Filed 2/7 tap

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALLACE McFARLAND,	)
Plaintiff-Appellant	)
vs.	)
BETHLEHEM STEEL CORPORATION, et al,	)
Defendants-Appelles	)

No. 84-2492
DC # CV-84-0499 WHO
Northern California

REBUTTAL TO RESPONSE
OPPOSING APPELLANT's
MOTION FOR RECONSIDERATION
OF DISMISSAL OF APPEAL

Appellant, Wallace McFarland, responds to Appellees' opposition to McFarland's Motion for Reconsideration of Dismissal of his Appeal. McFarland's entire motion and request is based upon the firm belief that

a basic injustice would be done to dismiss his appeal in view of the circumstances, all in violation of Fed. R Civ. P. 58 and case law interpreting this rule.

Appellees' motion to dismiss was to be heard by the District Court on May 25, 1984 at 1:30 PM in Courtroom 7. However, on May 22, 1984, Judge William H. Orrick chose to decide this motion without affording McFarland an opportunity to be heard. He stated his decision and the basis therefor in a document titled "Order" dated May 22, 1984. At the bottom of said "Order" were some handwritten notations setting forth dates presumably for future events regarding this case. Particularly the scheduled and upcoming hearing of another motion on June 21, 1984, which had been filed by another defendant in the litigation. A copy of the "Order" plaintiff McFarland received in this action is attached hereto as Exhibit A and made a part hereof.

In view of the above, it was plaintiff's belief that the case would continue to be heard at the June 21, 1984, hearing and was

extremely confusing to plaintiff-appellant as to why he had not been afforded an opportunity to be heard by the District Court. Nonethless, plaintiff received the lower court's reasons for his decision and appealed therefrom after first seeking discretionary relief.

By the lower court's "Order" he has dismissed matters which were calendared to be heard at later dates, including the motion of Appelles herein. By separate Order, the lower court instructed the Clerk of the Court to not file any further pleadings of plaintiff McFarland without prior approval of such court. If the lower court were able to provide by separate document an order instructing the Clerk on filing of McFarland's pleadings, it should also follow the separate document requirements of Fed. R. Civ. P. 58, and case law. See Calhoun v. United States, 647 F. 2d 6 (9th Cir. 1981); and The Brickyard, Wood v. Walter-Pinkston Companies, Inc., 735 F. 2d 1154 (9th Cir. 1984).

REBUTTAL TO APPELLEES' OPP.

Dismissal without appeal is such a harsh remedy that goes against the purpose of Rule 58 in assuring that appeals are fairly provided based upon clear and finite judgments and orders. A separate document seems most appropriate in this action in that much of the confusion regarding the various motions on file with the lower court at the time of its decision could have been avoided.

McFarland hereby respectfully requests that fairness and justice prevail and that this court reverse Judge Orrick's "Order" denying plaintiff, as well as defendants, an opportunity to be heard, and that McFarland be allowed to appeal said Order on grounds that he may further argue before this court.

Dated: Feb. 7, 1985

Respectfully submitted,

Wallace McFarland

Wallace McFarland
In Propria Persona

REBUTTAL TO APPELLEES' OPP.

Wallace McFarland
1322 McAllister Street
San Francisco, California 94115
(415) 567-1446

In Pro Per

Filed - Dec. 28, 1984
William L. Whittaker
Clerk, U. S. District Court
No. District of California

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Wallace McFarland, Plaintiff

v.

UNITED STATES DISTRICT COURT, BETHLEHEM STEEL CORPORATION, DR. ELTON G. WELKE, an individual, U. S. DEPARTMENT OF LABOR and the DEPUTY COMMISSIONER'S OFFICE, SHIPYARD AND MARINE SHOP LABORERS L866, McGUINN, HELLSMAN, PALEFSKY, PARRISH, MORIARTY, SMITH & AIMOLA, LEWIS PHON, an individual
Defendants

NOTICE OF MOTION TO RECONSIDER

Case No. 84-2492
DC CV-84-0499 WHO

To: The Honorable Judges Sneed, Kennedy and Boochever, Circuit Judges

Plaintiff was disappointed to receive your order of December 14, 1984, granted defendant motion to dismiss plaintiff's

notice of appeal in the instant matter.

However, there are still two procedural matters pending which require resolution. The plaintiff had filed on all defendants to show case and to be heard. Three defendants filed motions to be heard on May 25, 1984, and on May 22, 1984 Judge William H. Orrick dismissed three motions for three defendants.

On or about May 15, 1984, Local 886 attorney filed a motion with the Northern District to be heard on June 13, 1984. Judge Orrick scheduled the hearing on June 21, 1984, and there were not sixty days from June 21, 1984 to July 24, 1984. When plaintiff needed his petition to review, dated July 24, 1984. See Exhibit B and also the defendants that never responded to the charges at all.

Plaintiff Wallace McFarland, respectfully requested that rulings based on these remaining matters. See Fed R Civ P Rule 58, Bankers Trust Co. v. Mallis (1978) 435 US 381, 99 Sct. 117, 55 Le and 357.

Thank you for your prompt cooperation

December 24, 1984

Wallace McFarland

Wallace McFarland

-S-2

CERTIFICATION OF SERVICE
BY MAIL

I, ZADIE BROWN, certify and declare that I am a citizen of the United States, over the age of eighteen years, in the City and County of San Francisco, State of California and not a party of the action. On December 24, 1984, I served a true copy of the attached Amended Notice of Motion to Add Case No. L 2015.001 and C 84 0499, to Docket No. 84-2492, to attorneys of record as follows:

Lewis Phon, Esq.
1282 California Street
San Francisco, CA 94109

Parrish & Moriarty
1750 Van Ness Avenue
San Francisco, CA 94109

C. Mark Humbert, Esq.
Hall, Henry, Oliver & McReavy
100 Bush Street
San Francisco, CA 94104

Mocine, Plotz & Eggleston
1440 Broadway, Suite 1000
Oakland, CA 94612

Ms. Nancy A. Aimola,
McCarthy & Schwartz
333 Market Street (32nd Floor)
San Francisco, CA 94108

U. S. Department of Labor
450 Golden Gate Avenue
San Francisco, CA 94102

U. S. Department of Labor, Office
of Administrative Law Judges
211 Main Street
San Francisco, CA 94105

U. S. District Court, Northern
Division of California
450 Golden Gate Avenue
San Francisco, CA 94102

Bronson, Bronson, McKinnon
555 California Street
San Francisco, CA 94104

I, ZADIE BROWN, declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on December 24, 1984.

_____

Zadie Brown
1144 Fillmore St.
San Francisco, CA 94115

BILL PARRISH, ESQ.
PARRISH & MORIARTY
2710 California Street
San Francisco, CA 94115
Telephone: (415) 921-6831

Attorneys for Respondent/Cross-
Petitioner BETHLEHEM STEEL CORPORATION

BENEFITS REVIEW BOARD
1111 20th STREET, N.W.
WASHINGTON, D.C. 20036

WALLACE McFARLAND,	BRB NO. 82-1377A
Claimant/Petitioner,	PRIOR BRB NO. 77-462
v.	OALJ No. 82-LHCA-1015
BETHLEHEM STEEL CORPORATION,	PRIOR OALJ No. 76-LHCA-556
Self-Insured Respodent/Cross-Petitioner	OWCP Case No. 13-14151

EMPLOYER'S REQUEST THAT THE BENEFITS REVIEW BOARD TAKE JUDICIAL NOTICE OF RELATED CASES

COMES NOW Respondent Employer and Cross-Petitioner BETHELEHEM STEEL CORPORATION with this its request that the Benefits Review Board take judicial notice of the Orders of JUDGE WILLIAM H. ORRICK of the United States District Court for the Northern District of Cailfornia, each dated May 22, 1984.

Mr. McFarland's longshore claim is currently on appeal and on cross-appeal to the Benefits Review Board. Claimant/ Petitioner, Wallace McFarland, alleges Administrative Law Judge Thomas Schneider erred in refusing to reopen his claim under Section 22 of the Act, 33 U.S.C. §922. Respondent Employer/Cross-Petitioner Bethlehem Steel Corporation, alleges Judge Schneider erred in failing to grant employer relief under Section 26 of the Act, 33 U.S.C. §926.

Mr. McFarland has filed four separate complaints at the U.S. District Court for the Northern District of California, each containing various causes of action but all seeking to relitigate the issue of injury arising out of and in the course of employment and alleging the same complex of facts which have been alleged in the instant action.

The four U.S. District Court cases are:

(a) C 82 5187 SC filed January 27, 1982.

(b) C 92 5188 SC filed January 27, 1982.

(c) C 84 0277 SW filed January 19, 1984.

(d) C 94 0499 WHO filed January 31, 1984.

Bethlehem Steel Corporation maintains that the appropriate remedy for abuse of process in the civil courts is a complaint against Plaintiff for malicious prosecution, and that the remedy for similar actions before this and the

underlying tribunals is a claim for relief under Section 26 of the Act. Bethlehem Steel Corporation has the option of filing such a complaint in the civil arena and has exercised the option of claiming relief under Section 26 in this forum. Bethlehem Steel Corporation suggests that the Findings of Fact and Orders of Judge Orrick support and grant a vitality to the Employer's request for relief under Section 22 of the Act and request that this tribunal take judicial note of the said Orders in addressing that issue. Copies of said Orders are attached for this tribunal's convenience.

Dated: May 30, 1984.

Respectfully submitted,

PARRISH & MORIARTY

BILL PARRISH, ESQ.
Counsel for Respondent/
Cross-Petitioner
BETHLEHEM STEEL CORPO-
RATION

U.S. DEPARTMENT OF LABOR

Benefits Review Board
1111 20th St., N.W.
Washington, D.C. 20036

BRD No. 82-1377
and 82-1377A
Case No. 82-LHCA-101-S
OWCP No. 13-14151

Filed as part
of the Record

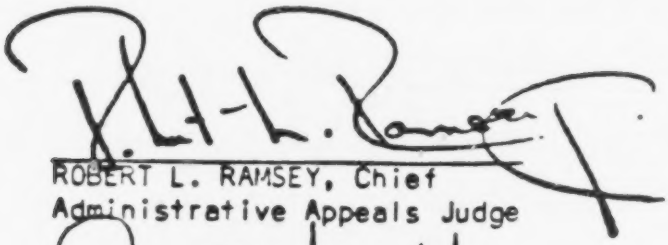
Sept. 12, 1984
(date)

WALLACE McFARLAND)
)
Claimant-Petitioner)
Cross-Respondent)
)
v.)
)
BETHLEHEM STEEL)
CORPORATION)
)
Self-Insured)
Employer-Respondent) ORDER
Cross-Petitioner)
)

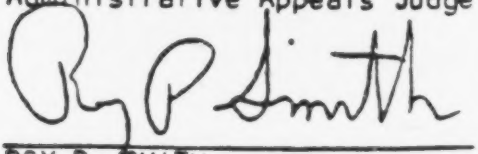
_____
clerk
Benefits Review Board

Employer in the captioned case has requested that the Board take judicial notice of an Order issued by the United States District Court for the Northern District of California.

The Board grants employers' request and takes notice of the Decision issued by the District Court.

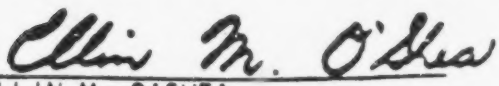


ROBERT L. RAMSEY, Chief
Administrative Appeals Judge



ROY P. SMITH
Administrative Appeals Judge

EXHIBIT H



ELLIN M. O'SHEA
Administrative Law Judge*

Dated this 12th
day of September 1984

MOCINE, PLOTZ & EGGLESTON
MARY H. MOCINE
1440 Broadway, Suite 1000
Oakland, California 94612
(415) 452-1300

Attorneys for Defendant
SHIPYARD AND MARINE SHOP
LABORERS LOCAL 886

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WALLACE McFARLAND, Plaintiff vs. BETHLEHEM STEEL CORPORATION, etc., et al., Defendants	No. C 84 0499 WHO

(Proposed)
ORDER GRANTING MOTION TO DISMISS

On June 15, 1984, the Motion of Defendant Shipyard and Marine Shop Laborers Local 886 came on for hearing before the Honorable Judge Orrick.

After review of the pleadings, briefs, declarations, matters to be judicially noticed and other documents, and consideration

of the oral arguments of the parties,

IT IS HEREBY ORDERED that the Motion to Dismiss of Defendant Shipyard and Marine Shop Laborers Local 886 should be and hereby is granted, and the Complaint herein dismissed.

Dated:

Judge of the United States
District Court for the
Northern District of
California

CERTIFICATION OF SERVICE BY MAIL

I, ZADIE BROWN, Certify and Declare that I am a Citizen of the United State, over 18 years of age, live in the City and County of San Francisco, State of California and not a party to the action. On July 10, 1985 I served a true copy of the Amended Petition Writ of Certiorari to the attorneys of record:

W. Martin Tellegen, Esq.
C. Mark Humbert, Esq.
A Professional Corporation
100 Bush Street, Suite 1200
San Francisco, CA 94104

McCarthy & Schwartz
333 Market Street, 32nd Floor
San Francisco, CA 94108

Lewis Phon, Esq.
1282 California Street
San Francisco, CA 94109

U. S. Department of Labor
450 Golden Gate Avenue
San Francisco, CA 94102

U. S. Department of Labor
Office of Administrative Law Judges
211 Main Street
San Francisco, CA 94105

Mocine, Plotz & Eggleston
1440 Broadway, Suite 1000
Oakland, California 94612

Parrish & Moriarty
1750 Van Ness Avenue
San Francisco, CA 94109
Attn: Paul D. Karasoff, Esq.

Bronson, Bronson & McKinnon
555 California Street
San Francisco, CA 94104
Attn: Dennis F. Shanagher

The Honorable Judge Orrick
U. S. District Court, Northern
California District
450 Golden Gate Avenue
San Francisco, CA 94102

The Honorable Judges
Sneed, Kennedy & Boochever
United States Court of Appeals
for the Ninth Circuit
P. O. Box 547
San Francisco, CA 94101

I, Zadie Brown, declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on July 10, 1985.

Zadie Brown

Zadie Brown
1144 Fillmore Street
San Francisco, CA
94115